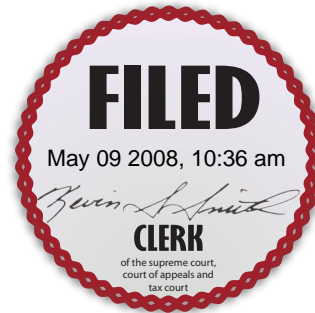


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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SHANNON CARLSON,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 29A02-0711-CR-992

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APPEAL FROM THE HAMILTON CIRCUIT COURT  
The Honorable Judith S. Proffitt, Judge  
Cause No. 29C01-0610-FC-0222

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**May 9, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Shannon Carlson (“Carlson”) pleaded guilty in Hamilton Circuit Court to Class C felony forgery. The trial court sentenced Carlson to eight years, with four years executed and four years suspended. Carlson appeals and claims that the trial court’s sentence was inappropriate given the nature of her offense and her character. We affirm.

### **Facts and Procedural History**

On July 17, 2006, Carlson stole checks belonging to Matthew Fugate, whom she claims was her boyfriend. Without his permission, she then made out a check for \$450 and presented it to a bank as though Mr. Fugate had written the check or had given her permission to do so. Carlson thereby received \$450 from Mr. Fugate’s account without his consent. As a result of this and other incidents, the State charged Carlson on October 19, 2006, with five counts of Class C felony forgery and one count of Class D felony theft.

On November 9, 2007, Carlson entered into a plea agreement with the State whereby she would plead guilty to one count of Class C felony forgery and the State would dismiss the other charges. On June 20, 2007, the parties appeared before the trial court and informed the court of the plea agreement. The trial court informed Carlson of her rights and took the plea under advisement.

At a hearing held on November 9, 2007, the trial court accepted Carlson’s plea and proceeded to sentencing. Carlson’s presentence investigation report (“PSI”) indicated that she had previously been convicted in Hamilton County for Class D felony theft. The PSI also revealed that Carlson was wanted in Arizona for failure to appear on several other charges, which included four charges of issuing bad checks and two counts of

misdemeanor theft. The PSI indicated that Carlson had come to Indiana to avoid prosecution on these Arizona charges. Carlson also had pending felony charges in Hamilton County which included Class C felony fraud on a financial institution, two counts of Class D felony theft, and two counts of Class D felony attempted fraud. Carlson claimed that most of these charges were going to be dismissed, but had no supporting evidence. Additionally, Carlson had previously been released on bond but had failed to appear for her originally-scheduled plea hearing. When asked if the PSI was accurate, Carlson informed the court of some minor errors, but did not dispute her criminal history.

At the conclusion of the sentencing hearing, the trial court found Carlson's prior criminal history to be an aggravating factor. The trial court noted not only Carlson's prior convictions, but also the outstanding charges in Arizona and Indiana. As a mitigating circumstance, the trial court found that Carlson was partially responsible for the care of her mother and ten-year-old brother, with whom she had been living. Concluding that the aggravating factors outweighed the mitigating factor, the trial court imposed an eight-year sentence, with four years executed and four years suspended. The executed portion of the sentence was to be served while on work-release. The trial court also ordered two years of formal probation. Carlson now appeals.

### **Discussion and Decision**

Carlson claims that the sentence imposed by the trial court was inappropriate. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence otherwise authorized by statute if, after due consideration of the trial court's decision, we find that the sentence

is inappropriate in light of the nature of the offense and the character of the offender. It is the defendant's burden to persuade us that her sentence is inappropriate.<sup>1</sup> McKinney v. State, 873 N.E.2d 630, 646 (Ind. Ct. App. 2007), trans. denied.

With regard to the nature of the offense, Carlson claims that her crime was a relatively minor one; she claims she simply forged a check belonging to her boyfriend to help her family financially. She also claims that the victim of the crime did not request restitution. As noted by the State, however, we cannot overlook the fact that Carlson's crime did not occur in isolation. Instead, this was simply one link in a chain of criminal behavior by Carlson stretching from Arizona to Indiana. Moreover, with regard to her claim of financial troubles, we observe that Carlson was not unemployed and even had plans to take a second job. Carlson's mother, with whom she lived, had been employed as well. Although Carlson claimed that her mother was no longer able to work, her mother was receiving Social Security benefits on behalf of Carlson's brother. Carlson's claim that financial trouble led to her criminal behavior are not convincing to us and do not lessen the nature of her crime.

With regard to the character of the offender, Carlson claims that her character is demonstrated by her guilty plea, that she has sought counseling to change her behavior, that she was remorseful, and that she did what she did to help her family. First, the trial court, which possesses the ability to directly observe the defendant, was in the best

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<sup>1</sup> Although Carlson refers to facts and circumstances which have traditionally been considered as aggravating or mitigating factors, she does so only to make arguments regarding the nature of her offense and her character. She does not make an independent argument that the trial court erred in the finding or weighing of aggravating and mitigating factors.

position to determine whether a defendant is genuinely remorseful. Corrales v. State, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004). We are in no position to judge Carlson's remorsefulness.

With regard to her guilty plea, the State correctly points out that Carlson received a substantial benefit by pleading guilty. In exchange for her guilty plea, the State dismissed four counts of Class C felony forgery and one count of Class D felony theft. We are not persuaded that Carlson's decision to plead guilty was her accepting responsibility for her actions as much as it was simply a pragmatic decision on her part. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one), trans. denied.

Carlson's history of criminal behavior does not speak well of her character. Although Carlson had only one prior conviction, she had numerous pending charges in Arizona for which she had failed to appear. She also did not deny the statement in the PSI that she had fled Arizona to escape prosecution on these charges. In addition to the instant crime, she was also facing several additional charges in Indiana for fraud on a financial institution, attempted fraud, and theft. While a record of arrests cannot establish the historical fact of prior criminal behavior, it can speak to the defendant's undeterred antisocial behavior. See Pickens v. State, 767 N.E.2d 530, 534 (Ind. 2002). Carlson also failed to appear for a hearing in the instant case. Although Carlson offered the excuse

that she was unaware of the date of the hearing, the trial court was under no obligation to believe her.

We also note that Carlson's plea agreement limited the executed portion of Carlson's sentence to five years, but that the trial court imposed only a four year executed sentence. Thus, the trial court did not even impose the maximum executed sentence allowable under the plea agreement. See Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring) (a defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of the reasonableness and appropriateness of the sentence). The trial court also ordered the executed portion of Carlson's sentence to be served on work-release. Under these facts and circumstances, we cannot say that the sentence imposed by the trial court was inappropriate.

Affirmed.

MAY, J., and VAIDIK, J., concur.